MONTANA LEGISLATIVE HISTORY

Chapter 351 1979

Bill H _____ S 455 Original bill & history ✓ C

H. Committee on Business & Industry			S. Committee on Business & Industry		
Hearing Date(s)	3-7	C	Hearing Date(s)	2-14	C
		C			C
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Date Out	3-7	C	DATE OUT	2-17	

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Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

Senate BILL NO. 455

INTRODUCED BY Lockrem

BY REQUEST OF THE STATE AUDITOR

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE LAWS RELATING TO SECURITIES REGULATION; AMENDING SECTIONS 30-10-103 THROUGH 30-10-105, 30-10-201, 30-10-210, 30-10-303, AND 30-10-305, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 30-10-103, MCA, is amended to read:

"30-10-103. Definitions. When used in parts 1 through 3 of this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Commissioner" means ~~investment~~ securities commissioner of this state.

(2) "Salesman" means any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect sales of securities, but "salesman" does not include an individual who represents an issuer in:

(a) effecting a transaction in a security exempted by subsections (1), (2), (3), (9), (10), or (11) of 30-10-104;

(b) effecting transactions exempted by 30-10-105; or

(c) effecting transactions with existing employees, partners, or directors of the issuer if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state. A partner, officer, or director of a broker-dealer or issuer is a "salesman" only if he otherwise comes within this definition.

(3) "Broker-dealer" means any person engaged in the business of effecting transactions in securities for the account of others or for his own account. "Broker-dealer" does not include:

(a) a salesman, issuer, bank, savings institution, trust company, or insurance company; or

(b) a person who has no place of business in this state if he effects transactions in this state exclusively with or through the issuers of the securities involved in the transactions, other broker-dealers, or banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees; or

~~(c) a person who has no place of business in this state if during any period of 12 consecutive months he does not direct more than 15 offers to sell or to buy into this state in any manner to persons other than those specified in~~

~~subsection (b).~~

(4) "Guaranteed" means guaranteed as to payment of principal, interest, or dividends.

(5) "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. "Investment adviser" does not include:

(a) a bank, savings institution, trust company, or insurance company;

(b) a lawyer, accountant, engineer, or teacher whose performance of these services is solely incidental to the practice of his profession;

(c) a broker-dealer;

(d) a publisher of any bona fide newspaper, news magazine, or business or financial publication of general, regular, and paid circulation;

(e) a person whose advice, analyses, or reports relate only to securities exempted by 30-10-104(1);

(f) a person who has no place of business in this state if:

~~(i)~~ his only clients in this state are other

investment advisers, broker-dealers, banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees; or

~~(ii) during any period of 12 consecutive months he does not direct business communications into this state in any manner to more than five resident clients other than those specified in subsection (i); or~~

(g) such other persons not within the intent of this subsection (5) as the commissioner may by rule or order designate.

(6) "Issuer" means any person who issues or proposes to issue any security, except that with respect to certificates of deposit, voting-trust certificates, or collateral-trust certificates or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors (or persons performing similar functions) or of the fixed, restricted management, or unit type, the term "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued.

(7) "Nonissuer" means not directly or indirectly for the benefit of the issuer.

(8) "Person", for the purpose of parts 1 through 3 of this chapter, means an individual, a corporation, a partnership, an association, a joint-stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government.

(9) (a) "Sale" or "sell" includes every contract of sale of, contract to sell, or disposition of a security or interest in a security for value.

(b) "Offer" or "offer to sell" includes every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value.

(c) Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing is considered to constitute part of the subject of the purchase and to have been offered and sold for value. A purported gift of assessable stock is considered to involve an offer and sale. Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issuer, is considered to include an offer of the

other security.

(10) "Securities Act of 1933", "Securities Exchange Act of 1934", "Public Utility Holding Company Act of 1935", and "Investment Company Act of 1940" mean the federal statutes of those names as amended before or after July 1, 1961.

(11) "Security" means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; collateral-trust certificate; preorganization certificate or subscription; transferable shares; investment contract; voting-trust certificate; certificate of deposit for a security; certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease; or, in general, any interest or instrument commonly known as a "security" or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the foregoing. "Security" does not include any insurance or endowment policy or annuity contract under which an insurance company promises to pay a sum of money either in a lump sum or periodically for life or some other specified period.

(12) "State" means any state, territory, or possession of the United States, as well as the District of Columbia

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and Puerto Rico."

Section 2. Section 30-10-104, MCA, is amended to read:

"30-10-104. Exempt securities. Sections 30-10-202 through 30-10-207 ~~shall~~ do not apply to any of the following securities:

(1) any security (including a revenue obligation) issued or guaranteed by the United States, any state, any political subdivision of a state, or any agency or corporate or other instrumentality of one or more of the foregoing; ~~or any certificate of deposit for~~ provided, however, 30-10-202 through 30-10-207 apply to a security issued by any of the foregoing that is payable solely from payments to be received in respect of property or money used under a lease, sale, or loan arrangement by or for a nongovernmental industrial or commercial enterprise, unless such enterprise or any security of which it is the issuer is within any of the exemptions enumerated in subsections (2) through (9) of this section.

(2) any security issued or guaranteed by Canada, any Canadian province, any political subdivision of any such province, any agency or corporate or other instrumentality of one or more of the foregoing or any other foreign government with which the United States currently maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer or guarantor;

(3) any security issued by and representing an interest in or a debt of or guaranteed by any bank organized under the laws of the United States or any bank, savings institution, or trust company organized or chartered as such and under the jurisdiction and supervision of the superintendent of banks of any state;

(4) any security issued by and representing an interest in or a debt of or guaranteed by any federal savings and loan association or any building and loan or similar association organized under the laws of any state and authorized to do business in this state;

(5) any insurance or endowment policy or annuity contract or optional annuity contract issued by a corporation subject to the supervision of the insurance commissioner;

(6) any security issued or guaranteed by any federal credit union or any credit union, industrial loan association, or similar association organized and supervised under the laws of this state;

(7) any security issued or guaranteed by any railroad, other common carrier, public utility, or holding company which is:

(a) subject to the jurisdiction of the interstate commerce commission;

(b) a registered holding company under the Public

Utility Holding Company Act of 1935 or a subsidiary of such a company within the meaning of that act;

(c) regulated in respect of its rates and charges by a governmental authority of the United States or any state or municipality; or

(d) regulated in respect to the issuance or guarantee of the security by a governmental authority of the United States, any state, Canada, or any Canadian province; also equipment trust certificates in respect to equipment conditionally sold or leased to a railroad or public utility, if other securities issued by such railroad or public utility would be exempt under this subsection;

(8) any security ~~listed or approved for listing upon notice of issuance on the New York stock exchange, the American stock exchange, the Midwest stock exchange, or any other stock exchange registered with the federal securities and exchange commission and approved by the commissioner, any other security of the same issuer which is of senior or substantially equal rank, any security called for by subscription rights or warrants so listed or approved, or any warrant or right to purchase or subscribe to any of the foregoing;~~ that meets all of the following conditions:

(a) if the issuer is not organized under the laws of the United States or a state, it has appointed a duly authorized agent in the United States for service of process

and has set forth the name and address of such agent in its prospectus;

(b) a class of the issuer's securities is required to be and is registered under section 12 of the Securities Exchange Act of 1934 and has been so registered for the 3 years immediately preceding the offering date;

(c) neither the issuer nor a significant subsidiary has had a material default during the last 7 years (or the issuer's existence if less than 7 years) in the payment of:

(i) principal, interest, dividends, or sinking fund installment on preferred stock or indebtedness for borrowed money; or

(ii) rentals under leases with terms of 3 years or more;

(d) the issuer has had consolidated net income (before extraordinary items and the cumulative effect of accounting changes) of at least $1 million in 4 of its last 5 fiscal years including its last fiscal year; and if the offering is of interest bearing securities, has had for its last fiscal year such net income, but before deduction for income taxes and depreciation, of at least 1 1/2 times the issuer's annual interest expense, giving effect to the proposed offering and the intended use of the proceeds. "Last fiscal year" as used in this subsection (8)(d), means the most recent year for which audited financial statements are

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available, provided that such statements cover a fiscal period ended not more than 15 months from the commencement of the offering.

(e) if the offering is of stock or shares, other than preferred stock or shares, such securities have voting rights and such rights include the right to have at least as many votes per share and the right to vote on at least as many general corporate decisions as each of the issuer's outstanding classes of stock or shares, except as otherwise required by law;

(f) if the offering is of stock or shares, other than preferred stock or shares, such securities are owned beneficially or of record on any date within 6 months prior to the commencement of the offering by at least 1,200 persons and on such date there are at least 750,000 such shares outstanding with an aggregate market value, based on the average bid price for that day, of at least $3,750,000. In connection with the determination of the number of persons who are beneficial owners of the stock or shares of an issuer, the issuer or broker-dealer may rely in good faith for the purposes of this section upon written information furnished by the record owners.

(9) any security issued by any person organized and operated not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal,

social, athletic, or reformatory purposes if the issuer pays a fee of $50 and files with the commissioner 20 days prior to the offering a written notice specifying the terms of the offer and the commissioner does not disallow the exemption in writing within such 20-day period;

(10) any commercial paper which arises out of a current transaction or the proceeds of which have been or are to be used for current transaction and which evidences an obligation to pay cash within 9 months of the date of issuance, exclusive of days of grace, or any renewal of such paper which is likewise limited or any guarantee of such paper or of any such renewal, when such commercial paper is sold to the banks or insurance companies;

(11) any investment contract issued in connection with an employee's stock purchase, savings, pension, profit-sharing, or similar benefit plan;

(12) any security for which registration is not necessary for protection of investors, as determined by the commissioner by rule or order. The commissioner may charge a fee of $50 for granting the exemption by order."

Section 3. Section 30-10-105, MCA, is amended to read:

"30-10-105. Exempt transactions. Except as in this section expressly provided, 30-10-201 through 30-10-207 shall not apply to any of the following transactions:

(1) any nonissuer isolated transaction, whether

effected through a broker-dealer or not;

(2) (a) any nonissuer distribution of an outstanding security by a registered broker-dealer if:

(i) a recognized securities manual contains the names of the issuer's officers and directors, a balance sheet of the issuer as of a date within 18 months, and a profit and loss statement for either the fiscal year preceding that date or the most recent year of operations; or

(ii) the security has a fixed maturity or a fixed interest or dividend provision and there has been no default during the current fiscal year or within the 3 preceding fiscal years, or during the existence of the issuer and any predecessors if less than 3 years, in the payment of principal, interest, or dividends on the security;

(b) the commissioner may by order deny or revoke the exemption specified in this subsection (2) with respect to a specific security. Upon the entry of such an order, the commissioner shall promptly notify all registered broker-dealers that it has been entered and of the reasons therefor and that within 15 days of the receipt of a written request the matter will be set down for hearing. If no hearing is requested and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and

opportunity for hearing to all interested persons, may modify or vacate the order or extend it until final determination. No order under this subsection may operate retroactively. No person may be considered to have violated parts 1 through 3 of this chapter by reason of any offer or sale effected after the entry of an order under this subsection if he sustains the burden of proof that he did not know and in the exercise of reasonable care could not have known of the order.

(3) any nonissuer transaction effected by or through a registered broker-dealer pursuant to an unsolicited order or offer to buy, but the commissioner may require that the customer acknowledge upon a specified form that the sale was unsolicited and that a signed copy of each form be preserved by the broker-dealer for a specified period;

(4) any transaction between the issuer or other person on whose behalf the offering is made and an underwriter or among underwriters;

(5) any transaction by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator in the performance of his official duties as such;

(6) any transaction executed by a bona fide pledgee without any purpose of evading parts 1 through 3 of this chapter;

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(7) any offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or other financial institution or institutional buyer, or to a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity;

(8) any transaction pursuant to an offer directed by the offerer to not more than 10 persons (other than those designated in subsection (7) of this section) in this state during any period of 12 consecutive months, whether or not the offerer or any of the offerees is then present in this state, if:

(a) the seller reasonably believes that all the buyers are purchasing for investment; and

(b) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer; provided, however, that a commission may be paid to a registered broker-dealer if the securities involved are registered with the United States securities and exchange commission under the Federal Securities and Exchange Act of 1933 as amended;

(9) any offer or sale of a preorganization certificate or subscription if:

(a) no commission or other remuneration is paid or

given directly or indirectly for soliciting any prospective subscriber;

(b) the number of subscribers does not exceed 10; and

(c) no payment is made by any subscriber;

(10) any transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within not more than 90 days of their issuance, if:

(a) no commission or other remuneration (other than a standby commission) is paid or given directly or indirectly for soliciting any security holder in this state; or

(b) the issuer first files a notice specifying the terms of the offer and the commissioner does not by order disallow either (a) or (b) of this subsection;

(11) any offer (but not a sale) of a security for which registration statements have been filed under both parts 1 through 3 of this chapter and the Securities Act of 1933 if no stop order or refusal order is in effect and no public proceeding or examination looking toward such an order is pending under either law;

(12) any offer (but not a sale) of a security for which a registration statement has been filed under parts 1 through 3 of this chapter and the commissioner, in his

discretion, does not disallow the offer in writing within 10 days of such filing;

~~(12)~~(13) the issuance of any stock dividend, whether the corporation distributing the dividend is the issuer of the stock or not, if nothing of value is given by stockholders for the distribution other than the surrender of a right to a cash dividend where the stockholder can elect to take a dividend in cash or stock;

~~(13)~~(14) any transaction incident to a right of conversion or a statutory or judicially approved reclassification, recapitalization, reorganization, quasi-reorganization, stock split, reverse stock split, merger, consolidation, or sale of assets."

Section 4. Section 30-10-201, MCA, is amended to read:

"30-10-201. Registration of broker-dealers, salesmen, and investment advisers. (1) It is unlawful for any person to transact business in this state as a broker-dealer or salesman, except in transactions exempt under 30-10-105, unless he is registered under parts 1 through 3 of this chapter.

(2) It is unlawful for a broker-dealer or issuer to employ a salesman to represent him in this state, except in transactions exempt under 30-10-105, unless the salesman is registered under parts 1 through 3 of this chapter.

(3) It is unlawful for any person to transact business

in this state as an investment adviser unless:

(a) he is so registered under parts 1 through 3 of this chapter;

(b) he is registered as a broker-dealer under parts 1 through 3 of this chapter; or

(c) his only clients in this state are investment companies, as defined in the Investment Company Act of 1940, or insurance companies.

~~(2)~~(4) A broker-dealer or a salesman, acting as an agent for an issuer or as an agent for a broker-dealer in the offer or sale of securities for an issuer, or an investment adviser may apply for registration by filing with the commissioner an application in such form as the commissioner prescribes and payment of the fee prescribed in 30-10-209. Except for persons in the employ of brokerage firms governed by the regulations of the securities and exchange commission, all salesmen must be legal residents of this state and must have actually resided in this state for a period of at least 1 year next prior to the date of application for registration. The commissioner may, upon request and for good cause shown by an applicant, waive the residency requirement. ~~Salesmen--shall--also~~ A salesman acting as agent for an issuer or broker-dealer who is not currently in compliance with the financial responsibility requirements prescribed by the Securities Exchange Act of

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1934 and by regulations adopted under it, may, in the discretion of the commissioner, be required to file with the commissioner a bond of a surety company duly authorized to transact business in this state. The bond shall be in the ~~sum of $5,000~~ an amount determined by the commissioner, payable to the state of Montana and conditioned upon the faithful compliance with the provisions of parts 1 through 3 of this chapter, and provide that upon failure to so comply, the salesman shall be liable to any and all persons who may suffer loss by reason thereof.

~~(3)~~(5) The application shall contain whatever information the commissioner requires.

~~(4)~~(6) If no denial order is in effect and no proceeding is pending under subsection (8) of this section, registration becomes effective at noon of the 30th day after an application is filed. The commissioner may specify an earlier effective date, and he may by order defer the effective date for an additional 60 days. The effective day after the filing of any amendment shall be noon of the 30th day thereafter unless otherwise accelerated by the commissioner.

~~(5)~~(7) Registration of a broker-dealer, salesman, or investment adviser shall be effective until March 1 following such registration and may be renewed. The registration of a salesman is not effective during any

period when he is not associated with an issuer or a registered broker-dealer specified in his application. When a salesman begins or terminates a connection with an issuer or registered broker-dealer, the salesman and the issuer or broker-dealer shall promptly notify the commissioner.

~~(6)~~(8) Registration of a broker-dealer, salesman, or investment adviser may be renewed by filing with the commissioner prior to the expiration thereof an application containing such information as the commissioner may require to indicate any material change in the information contained in the original application or any renewal application for registration as a broker-dealer, salesman, or investment adviser filed with the commissioner by the applicant, payment of the prescribed fee, and, in the case of a broker-dealer, a financial statement showing the financial condition of such broker-dealer as of a date within 90 days. A registered broker-dealer or investment adviser may file an application for registration of a successor, to become effective upon approval of the commissioner.

~~(7)~~(9) Every registered broker-dealer and investment adviser shall make and keep such accounts and other records, except with respect to securities exempt under 30-10-104(1), as may be prescribed by the commissioner. All records so required shall be preserved for 3 years unless the commissioner prescribes otherwise for particular types of

records. All the records of a registered broker-dealer or investment adviser are subject at any time or from time to time to such reasonable periodic, special, or other examinations, within or without this state, by representatives of the commissioner, as the commissioner considers necessary or appropriate in the public interest or for the protection of investors.

~~(8)~~(10) The commissioner may by order deny, suspend, or revoke registration of any broker-dealer, salesman, or investment adviser if he finds that the order is in the public interest and that the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, or director:

(a) has filed an application for registration under this section which, as of its effective date or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;

(b) has willfully violated or willfully failed to comply with any provision of parts 1 through 3 of this chapter or a predecessor law or any rule or order under parts 1 through 3 of this chapter or a predecessor law;

(c) has been convicted of any misdemeanor involving a

security or any aspect of the securities business or any felony;

(d) is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities business;

(e) is the subject of an order of the commissioner denying, suspending, or revoking registration as a broker-dealer, salesman, or investment adviser;

(f) is the subject of an order entered within the past 5 years by the securities administrator of any other state or by the federal securities and exchange commission denying or revoking registration as a broker-dealer or salesman or the substantial equivalent of those terms as defined in parts 1 through 3 of this chapter or is the subject of an order of the federal securities and exchange commission suspending or expelling him from a national securities exchange or national securities association registered under the Securities Exchange Act of 1934 or is the subject of a United States post office fraud order, but:

(i) the commissioner may not institute a revocation or suspension proceeding under this subsection (f) more than 1 year from the date of the order relied on; and

(ii) he may not enter any order under this subsection (f) on the basis of an order unless that order was based on

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facts which would currently constitute a ground for an order under this section;

(g) has engaged in dishonest or unethical practices in the securities business;

(h) is insolvent, either in the sense that his liabilities exceed his assets or in the sense that he cannot meet his obligations as they mature, but the commissioner may not enter an order against a broker-dealer or investment adviser under this subsection (h) without a finding of insolvency as to the broker-dealer or investment adviser;

(i) has not complied with a condition imposed by the commissioner under subsection ~~(8)~~ (10) of this section or is not qualified on the basis of such factors as training, experience, or knowledge of the securities business; or

(j) has failed to pay the proper filing fee, but the commissioner may enter only a denial order under this subsection (j), and he shall vacate any such order when the deficiency has been corrected. The commissioner may by order summarily postpone or suspend registration pending final determination of any proceeding under this section.

~~(9)~~ (11) Upon the entry of the order under subsection ~~(8)~~ (10) of this section, the commissioner shall promptly notify the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is a salesman, that it has been entered and of the reasons

therefor and that if requested by the applicant or registrant within 15 days after the receipt of the commissioner's notification the matter will be promptly set down for hearing. If no hearing is requested within 15 days and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing, may affirm, modify, or vacate the order.

~~(10)~~ (12) If the commissioner finds that any registrant or applicant for registration is no longer in existence or has ceased to do business as a broker-dealer, investment adviser, or salesman or is subject to an adjudication of mental incompetence or to the control of a committee, conservator, or guardian or cannot be located after reasonable search, the commissioner may by order cancel the registration or application."

Section 5. Section 30-10-210, MCA, is amended to read:

"30-10-210. Examination costs. (1) Any issuer or broker-dealer who is investigated or examined in connection with a registration under parts 1 through 3 of this chapter shall reimburse the commissioner or any of his duly authorized agents, officers, or employees for actual travel expenses, a reasonable living expense allowance, and a per diem as compensation of examiners, as necessarily incurred

on account of the examination, all at reasonable rates customary therefor and as established and adopted by the commissioner upon July 1, 1961, and annually thereafter upon presentation of a detailed account of such charges and expenses by the commissioner or pursuant to his written authorization. No person shall pay and no examiner shall accept any additional emolument on account of any such examination.

(2) The commissioner shall pay to the state treasurer to the credit of the general fund all moneys received hereunder. The commissioner may give written authorization for payment of the examination costs referred to in subsection (1) by the person examined directly to the examiner.

(3) If any issuer or broker-dealer fails to pay the charges and expenses referred to above, the same shall be paid out of the funds of the commissioner in the same manner as other disbursements of such funds. The amount so paid shall be a first lien upon all of the assets and property in this state of such issuer or broker-dealer and may be recovered by suit by the attorney general on behalf of the state of Montana and restored to the appropriate fund. Failure of such issuer or broker-dealer to pay such charges and expenses shall also work a forfeiture of his or its right to do business in this state under parts 1 through 3

of this chapter."

Section 6. Section 30-10-303, MCA, is amended to read:

"30-10-303. Unlawful representation concerning registration or exemption. Neither the fact that an application for registration under 30-10-201~~(2)~~(4) or a registration statement under 30-10-203, 30-10-204, or 30-10-205 has been filed nor the fact that a person or security is effectively registered constitutes a finding by the commissioner that any document filed under parts 1 through 3 of this chapter is true, complete, and not misleading. Neither any such fact nor the fact that an exemption or exception is available for a security or a transaction means that the commissioner has passed in any way upon the merits of qualifications of, or recommended or given approval to, any person, security, or transaction. It is unlawful to make or cause to be made to any prospective purchaser, customer, or client any representation inconsistent with this section."

Section 7. Section 30-10-305, MCA, is amended to read:

"30-10-305. Injunctions and other remedies. (1) Whenever it appears to the commissioner that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of parts 1 through 3 of this chapter or any rule or order hereunder, he may in his discretion:

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(a) issue an order directing the person to cease and desist from continuing the act or practice after reasonable notice and opportunity for a hearing. The commissioner may issue a temporary order pending the hearing that remains in effect until 10 days after any hearing is held or that becomes final if the person to whom notice is addressed does not request a hearing within 15 days after receipt of the notice; or

(b) without the issuance of a cease and desist order, bring an action in any court of competent jurisdiction to enjoin any such acts or practices and to enforce compliance with parts 1 through 3 of this chapter or any rule or order hereunder. Upon a proper showing a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. The commissioner may not be required to post a bond. If the commissioner prevails, he is entitled to reasonable attorneys' fees as fixed by the court.

(2) A final judgment or decree, criminal or civil, determining that a person has violated parts 1 through 3 of this chapter in an action brought by the commissioner for such violation, other than a consent judgment or decree entered before trial, is prima facie evidence against that person in an action brought against him under 30-10-307."

Section 8. Name change. Whenever the term "investment commissioner", relating to the investment commissioner, state auditor's office, created by 2-15-1901, appears in the MCA, it means "securities commissioner". The code commissioner is empowered and instructed to change all such references to "investment commissioner" to "securities commissioner".

-End-

46TH LEGISLATIVE SESSION

COMMITTEE ON BUSINESS & INDUSTRY

BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CONCURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CONCURRED IN DATE
SB #434	2/10/79	--------	TABLED IN COMMITTEE						
SB #439	2/10/79	2/16/79	2/16/79		2/16/79				
SB #451	2/10/79	2/16/79	2/16/79			2/16/79			
SB #455	2/12/79	2/17/79	2/17/79	2/17/79					
SB #460	2/12/79	--------	Transferred to State Administration 2/14/79						
SB #466	2/12/79	2/17/79	2/17/79	2/17/79					
SB #474	2/12/79	-------	TABLED IN COMMITTEE						
SB #493	2/13/79	2/19/79	2/19/79	-----	TABLED IN COMMITTEE				
SB #496	2/13/79	2/19/79	2/19/79			2/19/79			
SB #500	2/13/79	2/19/79	2/19/79			2/19/79			
SB #									
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Use a separate sheet for Senate, House Bills and Resolutions

MINUTES OF THE MEETING
BUSINESS & INDUSTRY COMMITTEE
MONTANA STATE SENATE

February 17, 1979

The meeting of the Business and Industry Committee was called to order by Chairman Frank Hazelbaker on the above date in Room 404 of the State Capitol Building at 10:00 a.m.

ROLL CALL: All members were present with the exception of Senator Peterson who was excused.

SENATE BILL 466: Chairman Hazelbaker called on Senator Turnage, sponsor of SB 466, to explain the bill to the Committee. Senator Turnage stated that this bill is an act to exempt publication of the Montana Code Annotated from state laws on bid letting and in-state preference for printers.

Senator Turnage stated the bill would make the implementation of the new Montana Code Annontated more effective.

PROPONENTS OF SENATE BILL 466: Mrs. Diana Dowling, Executive Director of the Legislative Council, stated that in 1979 they will go with Color World in their printing. Mrs. Dowling further stated they would much rather keep the job in the state if possible. However, Mrs. Dowling told the Committee it could be done cheaper and faster by an out-of-state firm if they are allowed to go that way.

OPPONENTS TO SENATE BILL 466: Mr. Larry D'Arcy, representing the Department of Administration, stated they are in opposition to SB 466. They believe in a strong centralized purchasing philosophy. They feel there are many problems with the bill. He stated that the bill is poorly written and the Department would like to have the opportunity to offer some amendments in order to make some language clarification in the bill.

There were questions from the Committee.

Senator Lowe asked if there were printers in the state that could do the printing job satisfactorily.

Senator Turnage told the Committee there were printers, but none that could do the job successfully.

Chairman Hazelbaker also stated there wasn't a firm that could a satisfactory printing job.

Senator Turnage stated the bill does not address itself to the ten percent problem.

Mrs. Dowling stated this bill pertains only to the Codes. The subject is to delete the Codes. She also stated that the Legislative Council will go to the firm that could do the job the best for the lowest cost.

The hearing was concluded on Senate Bill 466.

SENATE JOINT RESOLUTION 19: Senator Mike Anderson, sponsor of the resolution, stated that SJR 19 encourages Congress to reject any amendments to the McCarran-Ferguson Insurance Regulation Act and to leave insurance regulation to the states.

Mrs. Josephine Driscoll, representing the Insurance Department of the State of Montana, stated that they wholeheartedly support SJR 19. This resolution is a protection for the consumer.

Mr. Boyce Clarke, representing the Independent Insurance Agents of Montana, stated that Montana receives $13,000,000 from the insurance industry. He further stated that we have competition in Montana, and we have no need for federal regulation in Montana.

There were questions from the Committee.

Senator Dover asked why the state would lose money. Mrs. Driscoll stated the state would lose money because they wouldn't be regulating it. Also, it would create far too much bureaucracy, and you wouldn't get the protection of the people.

The hearing was closed on SJR 19.

DISPOSITION OF SENATE BILL 434:
Senator Regan moved that Senate Bill 434 be placed on the table until we know the disposition of SB 467. Senator Dover was the only "no" vote on the motion.

SENATE BILL 455: This bill generally revises laws on security regulation.

Mr. "Rick" Tucker, State Auditor for the Investment Department, explained the bill to the Committee. Senator Lockrem, sponsor of SB 455, was unable to be present at the hearing.

Mr. Tucker stated this bill changes the title of the investment commissioner to securities commissioner.

Mr. Tucker presented an exhibit which explains SB 455 to the Committee. This exhibit is attached. Mr. Tucker went through the sections of the attachment with the Committee.

PROPONENTS OF SENATE BILL 455: Mr. Harold Pitts, representing the Montana Bankers Association, stated they support SB 455. It would save them a tremendous amount of paper work.

Senator Goodover presented a telegram to the Committee from Mr. Darrell Booth, Chairman of KOA, Inc., Billings, Montana. He is in support of SB 455. The telegram is attached.

DISPOSITION OF SENATE JOINT RESOLUTION 19: Senator Dover moved that SJR 19 Do Pass. The Committee voted that SENATE JOINT RESOLUTION 19 DO PASS. Senator Regan was the only "no" vote.

DISPOSITION OF SENATE BILL 466: Senator Goodover moved that Senate Bill 466 Do Pass. Senator Dover seconded the motion. The Committee voted that SENATE BILL 466 DO PASS. Senators Lowe and Hager were the only "no" votes.

DISPOSITION OF SENATE BILL 455: Senator Goodover moved that Senate Bill 455 Do Pass. Senator Dover seconded the motion. The Committee voted unanimously that SENATE BILL 455 DO PASS.

ADJOURN: There being no further business, the meeting was adjourned at 11:45 a.m.

Senator Frank Hazelbaker, Chairman

ROLL CALL

BUSINESS & INDUSTRY COMMITTEE

46TH LEGISLATIVE SESSION - - 1979 Date Feb 17

NAME	PRESENT	ABSENT	EXCUSED
Pat Goodover, Vice Chairman	✓		
Chet Blaylock	✓		
Harold Dover	✓		
Tom Hager	✓		
Allen Kolstad	✓		
Bill Lowe	✓		
John Mehrens	✓		
Bob Peterson			✓
Pat Regan	✓		
Frank Hazelbaker, Chairman	✓		

Senate Committee Business and Industry

Explanation of Senate Bill 455,

Relating to Securities Regulation,

As Prepared by the State Auditor, Investment Department

Section 1 and Section 8

Page 1, Line 15 and Page 28, Line 1 thru 7

Changes investment commissioner to securities commissioner. Of all the fifty states and possessions, Montana is the only state that uses the term "investment". All others refer to "securities" in naming their commissioner, commission, director or division. The Uniform Law is cited as the "Uniform Securities Act". The Montana law is cited as the "Securities Act of Montana". It is therefore suggested that the office be renamed the office of securities commissioner, and that all other areas of law, relating to the office of investment commissioner, created by 2-15-1901, be changed to read securities commissioner, when recodified.

Section 1 30-10-103(3)(c)

Page 2, Lines 22 thru 25 and Page 3, Line 1

This subsection excludes from the definition certain actions of a broker-dealer who would otherwise be required to register his activities in order to transact business with Montana residents. In the opinion of the department the 15 persons mentioned hereunder are entitled to the same registration protection other residents are. In addition, determining or proving whether or not 15 persons, more or less, have received an offer by a broker-dealer, having no place of business in this state, is, in most cases, impossible.

Section 1 30-10-103(5)(ii)

Page 4, Lines 7 thru 10

Same explanation as above only relating to Investment advisers.

Section 2 30-10-104

Page 7, Line 4

Grammatical change only.

Section 2 30-10-104(1)

Page 7, Line 9 thru 18

This section was changed to include, for purposes of registration, for the protection of investors, securities issued by nongovernmental industrial or commercial enterprises which have in the past been exempt from registration. Since the introduction of the Industrial Development Revenue Bonds (IDR's) this section has been the source of several problems created by industrial and commercial enterprises and has resulted in substantial losses by Montana residents. In the opinion of the department, the term issued by "the United States, any state, any political subdivision of a state, etc,,,", is in form only and has no real substance in that it provided no protection as does other revenue obligations wherein the full faith and credit of the taxing power is pledged to protect the investment. The department feels that with these changes it will separate out those enterprises issuing securities for which registration is needed for the protection of Montana investors.

Section 2 30-10-105(8)

Page 9, Line 13 thru 25, Page 10, Page 11 Lines 1 thru 22

A complete explanation of this change would be too voluminous to be covered in this summary. The Uniform Securities Act Revisions Committee of the North American Securities Administrators Association have, over two years, conducted an intensive study of this "Blue Chip" exemption. They have solicited and received widespread public and industry comments; they have held hearings, consulted with and been advised by a panel of advisors. As such, they have recommended this replacement of the existing exchange exemption.

Several of the states have already introduced, or intend to introduce, this same change to their legislators.

If additional information is desired, I have copies of reports and statements or I can arrange for questions to be answered.

Section 2 30-10-104(9)

Page 11, Line 23 and Page 12, Line 1 thru 5

This exemption is refered to as the non-profit exemption. In the department's opinion because a corporation is non-profi should not in itself exempt it from total review. In the past this exemption has created problems. The department was unaware of the offerings until after fraud was alledged. In all of these cases a review of the offering before it was offered would have prevented a loss of investors money.

Section 2 30-10-104(12) (New Section)

Page 12, Line 17 thru 20

It is the opinion of this department that from time to time a registration is requested that would not be requireed for the protection of investors, but no specific exemption or exception is available.

Section 3 30-10-105(1)

Page 12, Line 25 and Page 13, Line 1

This change returns to the Montana Act the language of the Uniform Securities Act. It also shuts the door to those who would use the present exemption to come into Montana with an unsubstantial scheme, make one sale and run.

Section 3 30-10-105(12) (New Section-Red Herring)

Page 16, Line 23 thru 25 and Page 17, Lines 1 & 2

(Same as the above subsection 11, except filing with the SEC is not required) This subsection would allow the distribution of a preliminary prospectus after it is filed, and with the permission of the commissioner. In most cases it is desirable for the investor to have such an offer 48 hours or more prior to the sale.

Section 4 30-10-201(2)

Page 17, Line 21 thru 24

This subsection is inserted as an added protection regarding the registration of a salesman before transacting any securities business in Montana.

Section 4 30-10-201(4)

Page 18, Line 22 thru 25 and Page 19, Line 1, 2, & 5

This change is to relieve the bonding requirements as suggested by the Ligislative Auditor in their recent sunset audit.

Section 5 30-10-210(2)

Page 25, Lines 11 thru 14

This section will allow the department to contract with out of state persons to examine or investigate an issuer or broker-dealer with offices headquartered outside Montana.

Section 6 30-10-303

Page 26, Line 5

The only change in this section is to adjust references to subsections.

Section 7 30-10-305

Page 26, Line 20

Section title change only.

Section 7 30-10-305

Page 27, Lines 1 thru 9 and Lines 17 thru 25

(1)(a) provides the department with an administrative procedure under which it may immediately act to present the promoters of a fraudulent or unsubstantial scheme from causing financial injury to residents of Montana.

(2) provides that a victim of a securities fraud is entitled to the benefit of the investigative and enforcement efforts of the securities commissioner, county attorney, or other party employed in the prosecution of a criminal case under this act, by allowing a final judgment or decree to be used as prima facie evidence in a civil proceeding to recover damages suffered as a result of the fraud.

NAME: RG "Rick" Tucker DATE: 2/17/79

ADDRESS: 156 FAIRWAY Dr. Helena.

PHONE: 442-6302 - 449-2040

REPRESENTING WHOM? State Auditor Investment Dept.

APPEARING ON WHICH PROPOSAL: SB 455

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS: attached.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Harold Pitt DATE: 2-17-79

ADDRESS: Helena, Montana

PHONE: 442-3109

REPRESENTING WHOM? Montana Bankers Assn

APPEARING ON WHICH PROPOSAL: S.B. 445

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Bruce A. MacKenzie DATE: 2/17/77

ADDRESS: 16 Third Street N. Great Falls

PHONE: 453-1261

REPRESENTING WHOM? D.A. Davidson

APPEARING ON WHICH PROPOSAL: SB 455

DO YOU: SUPPORT? ✓ AMEND? _____ OPPOSE? _____

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

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HELENA MT 59601
AS A PUBLICLY HELD COMPANY HEADQUARTERED IN BILLINGS MT I URGE YOUR
SUPPORT OF SENATE BILL 455
DARRELL BOOTH CHAIRMAN KOA INC BILLINGS MT 59114
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STANDING COMMITTEE REPORT

February 17, 1979

MR. President:

We, your committee on Business and Industry

having had under consideration Senate Bill No. 455

Respectfully report as follows: That Senate / Bill No. 455

DO PASS

Chairman.

STATE PUB. CO.
Helena, Mont.

2/22

BUSN& IND.

COMMITTEE

__ Legislature

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
SB 383	AUTHORIZE SECURITIES THAT MAY BE PLEDGED TO SECURE DEPOSITS OF PUBLIC FUNDS.	2/22	THOMAS	3/5	BE CONCURRED IN	3/5
SB 399	REPEAL THE LICENSE FEE REGUIRED OF AN ARCHITECT BUILDER, CONTRACTOR, OR MANUFACTURER DOING MORE THAN $15,000 BUSINESS PER YEAR.	2/21	HAGEN	3/5	BE CONCURRED IN	3/5
SB 408	CLOSE BANK'S OFFICES ON ANY DAY WHEN THE FEDERAL RESERVE BANK OF MINN. IS NOT OPEN FOR BUSINESS...	2/22	PE TERSON	3/6	BE CONCURRED IN CONCENT CAL.	3/6
SB 421	PERMIT LICENSEES UNDER THE MONTANA CONSUMER LOAN ACT TO MAKE LOANS NOT EXCEEDING $25,000 & REVISING ALLOWABLE CHARGES.	2/22	GOODOVER	3/6	BE CONCURRED IN	3/6
SB 427	SET STANDARDS FOR ADVERTISING BY A REAL ESTATE BROKER OPERATING UNDER A FRANCHISE AGREEMENT.	2/22	TURNAGE	3/6	BE CONCURRED IN	3/6
SB 455	REVISE THE LAWS RELATING TO SECURITIES REGULATION;...	2/23	LOCKREM	3/7	BE CONCURRED IN	3/7

March 7, 1979
Business & Industry
46th Legislative Session

The Business & Industry Committee held a meeting at 8:00 a.m. in room 437, Wednesday March 7, 1979. All members were present. Some members were excused during the meeting to attend other hearings.

Chairman Joe Quilici called the meeting to order and opened the hearing on SJR 19.

Senator Anderson, sponsor, was not present. Rep. Hirsch introduced the bill to the committee. This resolution would encourage the congress to reject any legislation that would amend the McCarran-Ferguson Act.

Mr. Boyce Clarke, Independent Insurance Agents of Montana, testified in support of the resolution. Copy of his testimony is attached.

Jo Driscoll, chief deputy insurance commissioner, testified in favor of the bill. She said she would not like to see the federal government take over any part of the state government system.

There were no opponents to SJR 19.

Rep. Hirsch closed on SJR 19 following questions from the committee.

SB 458

Senator Healy, sponsor, introduced the bill to the committee. The bill would reestablish the board of plumbers. He explained the changed in the bill.

Mr. Mitch Mehailovich, representing the state board of plumbers, stated that there is a real need for the board in order to protect the public.

Mr. Joe Martin, Mt. State Assoc. Journeyman Plumbers, testified in support of the bill. He stated that this bill is the only plumbing bill presented from the Senate to the House and if this bill does not pass there will be no plumbing law in the state of Montana. He said that the public would suffer if the bill does not pass.

A.W. Clarkson, Board of Plumbers, testified in support of the bill. Copy of his written testimony is attached.

SB 489

Senator Rasmussen, sponsor, introduced the bill to the committee. The bill would reestablish the board of public accountants.

Tony Gerharz, Mt. Society of C.P.A.'s, testified in support of SB 489.

Larry Huss, representing the Mt. Society of C.P.A.'s, arose in support of SB 489. He passed out copies of propossed amendments (see 1. & 2. on attached sheet).

There were no opponents to SB 489.

Questions from the committee followed. John Northey from the legislative auditor's office appeared to answer questions for the committee. Also Scott Seacat answered questions for the committee. Some of the members of the committee were concerned about the continuing education.

Senator Rasmussen closed on SB 489. He recommended the adoption of the amendments.

SB 455

Senator Lockrem, sponsor, was not present. Rick Tucker explained the bill to the committee. Copy of his printed explanation is attached.

Bruce MacKenzie, D.A. Davidson, appeared in support of the bill.

Also present to support the bill was Harold Pitts, Mt. Bankers Assoc.

There were no opponents to SB 455.

Questions from the committee followed.

Mr. Tucker gave closing statement on SB 455. He said this bill would be an needed up-date and provide more protection to investors of Montana.

EXECUTIVE SESSION:

SJR 19

Rep. Stobie moved that SJR 19 BE CONCURRED IN. Discussion on the motion followed. A vote carried unanimously. Six members were absent during the vote.
Rep. Les Hirsch will carry SJR 19 in the House.

EXECUTIVE ACTION CONT.

SB 489

Rep. Cooney moved that the amendments presented by the Society of C.P.A.'s be adopted. (see amendment 1,2,3&4 on attached sheet) Discussion on the motion followed. A vote carried unanimously.

Rep. Metcalf moved to amend out of the bill on page 8, lines 13 - 15 the confirmation requirement by the Senate. Discussion on the motion followed. A hand show vote was taken and failed.

Rep. Robbins made a motion that SB 489 AS AMENDED BE CONCURRED IN. Discussion followed. A vote carried unanimously.

Rep. Cooney moved that the committee adopt the statement of intent. Vote was unanimous.
Rep. Gilligan will carry the bill in the House.

SB 496

Rep. Elliosn moved that SB 496 BE CONCURRED IN. Following discussion a vote was taken and carried unanimously. Rep. Ellison will carry the bill in the House.

SB 455

Rep. Cooney moved that SB 455 BE CONCURRED IN. The motion was discussed. A vote carrid unanimously. Rep. Ramirez will carry the bill in the House.

SB 458

Rep. Stobie made a motion to take out the section of a manditory review on page 6, lines 8 and 9. Discussion on the motion followed. It was brought out that if Rep. Scully's bill does not pass the review would be manditory with or without section (4) in the bill. A vote was taken on the motion and carried 10 - 5.

Rep. Stobie moved that SB 458 AS AMENDED BE CONCURRED IN. Following discussion a vote was taken and carried unanimously.

Rep. Ellerd moved the statement of intent be adopted by the committee. A vote carried unanimously.
Rep. Quilici will carry the bill in the House.

SB 390

Rep. Stobie moved that section (4) page 7, lines 17 and 18, manditory review, be stricken from the bill. Following discussion a vote was taken and carried 10 - 5. Rep. Metcalf Mathe, Eller, Vincent and Quilici voted no.

SENATE BILL NO. 455

INTRODUCED BY LOCKREM

BY REQUEST OF THE STATE AUDITOR

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE LAWS RELATING TO SECURITIES REGULATION; AMENDING SECTIONS 30-10-103 THROUGH 30-10-105, 30-10-201, 30-10-210, 30-10-303, AND 30-10-305, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 30-10-103, MCA, is amended to read:

"30-10-103. Definitions. When used in parts 1 through 3 of this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Commissioner" means ~~investment~~ securities commissioner of this state.

(2) "Salesman" means any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect sales of securities, but "salesman" does not include an individual who represents an issuer in:

(a) effecting a transaction in a security exempted by subsections (1), (2), (3), (9), (10), or (11) of 30-10-104;

(b) effecting transactions exempted by 30-10-105; or

(c) effecting transactions with existing employees, partners, or directors of the issuer if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state. A partner, officer, or director of a broker-dealer or issuer is a "salesman" only if he otherwise comes within this definition.

(3) "Broker-dealer" means any person engaged in the business of effecting transactions in securities for the account of others or for his own account. "Broker-dealer" does not include:

(a) a salesman, issuer, bank, savings institution, trust company, or insurance company; or

(b) a person who has no place of business in this state if he effects transactions in this state exclusively with or through the issuers of the securities involved in the transactions, other broker-dealers, or banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees; or

~~(c) a person who has no place of business in this state if during any period of 12 consecutive months he does not direct more than 15 offers to sell or to buy into this state in any manner to persons other than those specified in~~

REFERENCE BILL

~~subsection-(b)~~.

(4) "Guaranteed" means guaranteed as to payment of principal, interest, or dividends.

(5) "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. "Investment adviser" does not include:

(a) a bank, savings institution, trust company, or insurance company;

(b) a lawyer, accountant, engineer, or teacher whose performance of these services is solely incidental to the practice of his profession;

(c) a broker-dealer;

(d) a publisher of any bona fide newspaper, news magazine, or business or financial publication of general, regular, and paid circulation;

(e) a person whose advice, analyses, or reports relate only to securities exempted by 30-10-104(1);

(f) a person who has no place of business in this state if:

~~(i)~~ his only clients in this state are other

investment advisers, broker-dealers, banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees; or

~~(ii) during any period of 12 consecutive months he does not direct business communications into this state in any manner to more than five resident clients other than those specified in subsection (i); or~~

(g) such other persons not within the intent of this subsection (5) as the commissioner may by rule or order designate.

(6) "Issuer" means any person who issues or proposes to issue any security, except that with respect to certificates of deposit, voting-trust certificates, or collateral-trust certificates or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors (or persons performing similar functions) or of the fixed, restricted management, or unit type, the term "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued.

(7) "Nonissuer" means not directly or indirectly for the benefit of the issuer.

(8) "Person", for the purpose of parts 1 through 3 of this chapter, means an individual, a corporation, a partnership, an association, a joint-stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government.

(9) (a) "Sale" or "sell" includes every contract of sale of, contract to sell, or disposition of a security or interest in a security for value.

(b) "Offer" or "offer to sell" includes every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value.

(c) Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing is considered to constitute part of the subject of the purchase and to have been offered and sold for value. A purported gift of assessable stock is considered to involve an offer and sale. Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issuer, is considered to include an offer of the

other security.

(10) "Securities Act of 1933", "Securities Exchange Act of 1934", "Public Utility Holding Company Act of 1935", and "Investment Company Act of 1940" mean the federal statutes of those names as amended before or after July 1, 1961.

(11) "Security" means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; collateral-trust certificate; preorganization certificate or subscription; transferable shares; investment contract; voting-trust certificate; certificate of deposit for a security; certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease; or, in general, any interest or instrument commonly known as a "security" or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the foregoing. "Security" does not include any insurance or endowment policy or annuity contract under which an insurance company promises to pay a sum of money either in a lump sum or periodically for life or some other specified period.

(12) "State" means any state, territory, or possession of the United States, as well as the District of Columbia

and Puerto Rico."

Section 2. Section 30-10-104, MCA, is amended to read:

"30-10-104. Exempt securities. Sections 30-10-202 through 30-10-207 ~~shall~~ do not apply to any of the following securities:

(1) any security (including a revenue obligation) issued or guaranteed by the United States, any state, any political subdivision of a state, or any agency or corporate or other instrumentality of one or more of the foregoing; ~~or any certificate of deposit for~~ provided, however, 30-10-202 through 30-10-207 apply to a security issued by any of the foregoing that is payable solely from payments to be received in respect of property or money used under a lease, sale, or loan arrangement by or for a nongovernmental industrial or commercial enterprise, unless such enterprise or any security of which it is the issuer is within any of the exemptions enumerated in subsections (2) through (9) of this section.

(2) any security issued or guaranteed by Canada, any Canadian province, any political subdivision of any such province, any agency or corporate or other instrumentality of one or more of the foregoing or any other foreign government with which the United States currently maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer or guarantor;

(3) any security issued by and representing an interest in or a debt of or guaranteed by any bank organized under the laws of the United States or any bank, savings institution, or trust company organized or chartered as such and under the jurisdiction and supervision of the superintendent of banks of any state;

(4) any security issued by and representing an interest in or a debt of or guaranteed by any federal savings and loan association or any building and loan or similar association organized under the laws of any state and authorized to do business in this state;

(5) any insurance or endowment policy or annuity contract or optional annuity contract issued by a corporation subject to the supervision of the insurance commissioner;

(6) any security issued or guaranteed by any federal credit union or any credit union, industrial loan association, or similar association organized and supervised under the laws of this state;

(7) any security issued or guaranteed by any railroad, other common carrier, public utility, or holding company which is:

(a) subject to the jurisdiction of the interstate commerce commission;

(b) a registered holding company under the Public

Utility Holding Company Act of 1935 or a subsidiary of such a company within the meaning of that act;

(c) regulated in respect of its rates and charges by a governmental authority of the United States or any state or municipality; or

(d) regulated in respect to the issuance or guarantee of the security by a governmental authority of the United States, any state, Canada, or any Canadian province; also equipment trust certificates in respect to equipment conditionally sold or leased to a railroad or public utility, if other securities issued by such railroad or public utility would be exempt under this subsection;

(8) any security ~~listed or approved for listing upon notice of issuance on the New York stock exchange, the American stock exchange, the Midwest stock exchange, or any other stock exchange registered with the federal securities and exchange commission and approved by the commissioner, any other security of the same issuer which is of senior or substantially equal rank, any security called for by subscription rights or warrants so listed or approved, or any warrant or right to purchase or subscribe to any of the foregoing~~ that meets all of the following conditions:

(a) if the issuer is not organized under the laws of the United States or a state, it has appointed a duly authorized agent in the United States for service of process

and has set forth the name and address of such agent in its prospectus;

(b) a class of the issuer's securities is required to be and is registered under section 12 of the Securities Exchange Act of 1934 and has been so registered for the 3 years immediately preceding the offering date;

(c) neither the issuer nor a significant subsidiary has had a material default during the last 7 years (or the issuer's existence if less than 7 years) in the payment of:

(i) principal, interest, dividend, or sinking fund installment on preferred stock or indebtedness for borrowed money; or

(ii) rentals under leases with terms of 3 years or more;

(d) the issuer has had consolidated net income (before extraordinary items and the cumulative effect of accounting changes) of at least $1 million in 4 of its last 5 fiscal years including its last fiscal year; and if the offering is of interest bearing securities, has had for its last fiscal year such net income, but before deduction for income taxes and depreciation, of at least 1 1/2 times the issuer's annual interest expense, giving effect to the proposed offering and the intended use of the proceeds. "Last fiscal year" as used in this subsection (8)(d) means the most recent year for which audited financial statements are

available, provided that such statements cover a fiscal period ended not more than 15 months from the commencement of the offering.

(e) if the offering is of stock or shares, other than preferred stock or shares, such securities have voting rights and such rights include the right to have at least as many votes per share and the right to vote on at least as many general corporate decisions as each of the issuer's outstanding classes of stock or shares, except as otherwise required by law;

(f) if the offering is of stock or shares, other than preferred stock or shares, such securities are owned beneficially or of record on any date within 6 months prior to the commencement of the offering by at least 1,200 persons and on such date there are at least 750,000 such shares outstanding with an aggregate market value, based on the average bid price for that day, of at least $3,750,000. In connection with the determination of the number of persons who are beneficial owners of the stock or shares of an issuer, the issuer or broker-dealer may rely in good faith for the purposes of this section upon written information furnished by the record owners.

(9) any security issued by any person organized and operated not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal,

social, athletic, or reformatory purposes if the issuer pays a fee of $50 and files with the commissioner 20 days prior to the offering a written notice specifying the terms of the offer and the commissioner does not disallow the exemption in writing within such 20-day period;

(10) any commercial paper which arises out of a current transaction or the proceeds of which have been or are to be used for current transaction and which evidences an obligation to pay cash within 9 months of the date of issuance, exclusive of days of grace, or any renewal of such paper which is likewise limited or any guarantee of such paper or of any such renewal, when such commercial paper is sold to the banks or insurance companies;

(11) any investment contract issued in connection with an employee's stock purchase, savings, pension, profit-sharing, or similar benefit plan;

(12) any security for which registration is not necessary for protection of investors, as determined by the commissioner by rule or order. The commissioner may charge a fee of $50 for granting the exemption by order."

Section 3. Section 30-10-105, MCA, is amended to read:

"30-10-105. Exempt transactions. Except as in this section expressly provided, 30-10-201 through 30-10-207 shall not apply to any of the following transactions:

(1) any nonissuer isolated transaction, whether

effected through a broker-dealer or not;

(2) (a) any nonissuer distribution of an outstanding security by a registered broker-dealer if:

(i) a recognized securities manual contains the names of the issuer's officers and directors, a balance sheet of the issuer as of a date within 18 months, and a profit and loss statement for either the fiscal year preceding that date or the most recent year of operations; or

(ii) the security has a fixed maturity or a fixed interest or dividend provision and there has been no default during the current fiscal year or within the 3 preceding fiscal years, or during the existence of the issuer and any predecessors if less than 3 years, in the payment of principal, interest, or dividends on the security;

(b) the commissioner may by order deny or revoke the exemption specified in this subsection (2) with respect to a specific security. Upon the entry of such an order, the commissioner shall promptly notify all registered broker-dealers that it has been entered and of the reasons therefor and that within 15 days of the receipt of a written request the matter will be set down for hearing. If no hearing is requested and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and

opportunity for hearing to all interested persons, may modify or vacate the order or extend it until final determination. No order under this subsection may operate retroactively. No person may be considered to have violated parts 1 through 3 of this chapter by reason of any offer or sale effected after the entry of an order under this subsection if he sustains the burden of proof that he did not know and in the exercise of reasonable care could not have known of the order.

(3) any nonissuer transaction effected by or through a registered broker-dealer pursuant to an unsolicited order or offer to buy, but the commissioner may require that the customer acknowledge upon a specified form that the sale was unsolicited and that a signed copy of each form be preserved by the broker-dealer for a specified period;

(4) any transaction between the issuer or other person on whose behalf the offering is made and an underwriter or among underwriters;

(5) any transaction by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator in the performance of his official duties as such;

(6) any transaction executed by a bona fide pledgee without any purpose of evading parts 1 through 3 of this chapter;

(7) any offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or other financial institution or institutional buyer, or to a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity;

(8) any transaction pursuant to an offer directed by the offerer to not more than 10 persons (other than those designated in subsection (7) of this section) in this state during any period of 12 consecutive months, whether or not the offerer or any of the offerees is then present in this state, if:

(a) the seller reasonably believes that all the buyers are purchasing for investment; and

(b) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer; provided, however, that a commission may be paid to a registered broker-dealer if the securities involved are registered with the United States securities and exchange commission under the Federal Securities and Exchange Act of 1933 as amended;

(9) any offer or sale of a preorganization certificate or subscription if:

(a) no commission or other remuneration is paid or

given directly or indirectly for soliciting any prospective subscriber;

(b) the number of subscribers does not exceed 10; and

(c) no payment is made by any subscriber;

(10) any transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within not more than 90 days of their issuance, if:

(a) no commission or other remuneration (other than a standby commission) is paid or given directly or indirectly for soliciting any security holder in this state; or

(b) the issuer first files a notice specifying the terms of the offer and the commissioner does not by order disallow either (a) or (b) of this subsection;

(11) any offer (but not a sale) of a security for which registration statements have been filed under both parts 1 through 3 of this chapter and the Securities Act of 1933 if no stop order or refusal order is in effect and no public proceeding or examination looking toward such an order is pending under either law;

(12) any offer (but not a sale) of a security for which a registration statement has been filed under parts 1 through 3 of this chapter and the commissioner, in his

discretion, does not disallow the offer in writing within 10 days of such filing;

~~(12)~~(13) the issuance of any stock dividend, whether the corporation distributing the dividend is the issuer of the stock or not, if nothing of value is given by stockholders for the distribution other than the surrender of a right to a cash dividend where the stockholder can elect to take a dividend in cash or stock;

~~(13)~~(14) any transaction incident to a right of conversion or a statutory or judicially approved reclassification, recapitalization, reorganization, quasi-reorganization, stock split, reverse stock split, merger, consolidation, or sale of assets."

Section 4. Section 30-10-201, MCA, is amended to read:

"30-10-201. Registration of broker-dealers, salesmen, and investment advisers. (1) It is unlawful for any person to transact business in this state as a broker-dealer or salesman, except in transactions exempt under 30-10-105, unless he is registered under parts 1 through 3 of this chapter.

(2) It is unlawful for a broker-dealer or issuer to employ a salesman to represent him in this state, except in transactions exempt under 30-10-105, unless the salesman is registered under parts 1 through 3 of this chapter.

(3) It is unlawful for any person to transact business

in this state as an investment adviser unless:

(a) he is so registered under parts 1 through 3 of this chapter;

(b) he is registered as a broker-dealer under parts 1 through 3 of this chapter; or

(c) his only clients in this state are investment companies, as defined in the Investment Company Act of 1940, or insurance companies.

~~(2)~~(4) A broker-dealer or a salesman, acting as an agent for an issuer or as an agent for a broker-dealer in the offer or sale of securities for an issuer, or an investment adviser may apply for registration by filing with the commissioner, an application in such form as the commissioner prescribes and payment of the fee prescribed in 30-10-209. Except for persons in the employ of brokerage firms governed by the regulations of the securities and exchange commission, all salesmen must be legal residents of this state and must have actually resided in this state for a period of at least 1 year next prior to the date of application for registration. The commissioner may, upon request and for good cause shown by an applicant, waive the residency requirement. ~~Salesmen--shall--also~~ A salesman acting as agent for an issuer or broker-dealer who is not currently in compliance with the financial responsibility requirements prescribed by the Securities Exchange Act of

1934 and by regulations adopted under its ~~may~~, in the discretion of the commissioner, be required to file with the commissioner a bond of a surety company duly authorized to transact business in this state. The bond shall be in the ~~sum of $5,000~~ an amount determined by the commissioner, payable to the state of Montana and conditioned upon the faithful compliance with the provisions of parts 1 through 3 of this chapter, and provide that upon failure to so comply, the salesman shall be liable to any and all persons who may suffer loss by reason thereof.

~~(3)~~(5) The application shall contain whatever information the commissioner requires.

~~(4)~~(6) If no denial order is in effect and no proceeding is pending under subsection (8) of this section, registration becomes effective at noon of the 30th day after an application is filed. The commissioner may specify an earlier effective date, and he may by order defer the effective date for an additional 60 days. The effective day after the filing of any amendment shall be noon of the 30th day thereafter unless otherwise accelerated by the commissioner.

~~(5)~~(7) Registration of a broker-dealer, salesman, or investment adviser shall be effective until March 1 following such registration and may be renewed. The registration of a salesman is not effective during any

period when he is not associated with an issuer or a registered broker-dealer specified in his application. When a salesman begins or terminates a connection with an issuer or registered broker-dealer, the salesman and the issuer or broker-dealer shall promptly notify the commissioner.

~~(6)~~(8) Registration of a broker-dealer, salesman, or investment adviser may be renewed by filing with the commissioner prior to the expiration thereof an application containing such information as the commissioner may require to indicate any material change in the information contained in the original application or any renewal application for registration as a broker-dealer, salesman, or investment adviser filed with the commissioner by the applicant, payment of the prescribed fee, and, in the case of a broker-dealer, a financial statement showing the financial condition of such broker-dealer as of a date within 90 days. A registered broker-dealer or investment adviser may file an application for registration of a successor, to become effective upon approval of the commissioner.

~~(7)~~(9) Every registered broker-dealer and investment adviser shall make and keep such accounts and other records, except with respect to securities exempt under 30-10-104(1), as may be prescribed by the commissioner. All records so required shall be preserved for 3 years unless the commissioner prescribes otherwise for particular types of

records. All the records of a registered broker-dealer or investment adviser are subject at any time or from time to time to such reasonable periodic, special, or other examinations, within or without this state, by representatives of the commissioner, as the commissioner considers necessary or appropriate in the public interest or for the protection of investors.

~~(8)~~(10) The commissioner may by order deny, suspend, or revoke registration of any broker-dealer, salesman, or investment adviser if he finds that the order is in the public interest and that the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, or director:

(a) has filed an application for registration under this section which, as of its effective date or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;

(b) has willfully violated or willfully failed to comply with any provision of parts 1 through 3 of this chapter or a predecessor law or any rule or order under parts 1 through 3 of this chapter or a predecessor law;

(c) has been convicted of any misdemeanor involving a

security or any aspect of the securities business or any felony;

(d) is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities business;

(e) is the subject of an order of the commissioner denying, suspending, or revoking registration as a broker-dealer, salesman, or investment adviser;

(f) is the subject of an order entered within the past 5 years by the securities administrator of any other state or by the federal securities and exchange commission denying or revoking registration as a broker-dealer or salesman or the substantial equivalent of those terms as defined in parts 1 through 3 of this chapter or is the subject of an order of the federal securities and exchange commission suspending or expelling him from a national securities exchange or national securities association registered under the Securities Exchange Act of 1934 or is the subject of a United States post office fraud order, but:

(i) the commissioner may not institute a revocation or suspension proceeding under this subsection (f) more than 1 year from the date of the order relied on; and

(ii) he may not enter any order under this subsection (f) on the basis of an order unless that order was based on

facts which would currently constitute a ground for an order under this section;

(g) has engaged in dishonest or unethical practices in the securities business;

(h) is insolvent, either in the sense that his liabilities exceed his assets or in the sense that he cannot meet his obligations as they mature, but the commissioner may not enter an order against a broker-dealer or investment adviser under this subsection (h) without a finding of insolvency as to the broker-dealer or investment adviser;

(i) has not complied with a condition imposed by the commissioner under subsection ~~(8)~~ [10] of this section or is not qualified on the basis of such factors as training, experience, or knowledge of the securities business; or

(j) has failed to pay the proper filing fee, but the commissioner may enter only a denial order under this subsection (j), and he shall vacate any such order when the deficiency has been corrected. The commissioner may by order summarily postpone or suspend registration pending final determination of any proceeding under this section.

~~(9)~~ [11] Upon the entry of the order under subsection ~~(8)~~ [10] of this section, the commissioner shall promptly notify the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is a salesman, that it has been entered and of the reasons

therefor and that if requested by the applicant or registrant within 15 days after the receipt of the commissioner's notification the matter will be promptly set down for hearing. If no hearing is requested within 15 days and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing, may affirm, modify, or vacate the order.

~~(10)~~ [12] If the commissioner finds that any registrant or applicant for registration is no longer in existence or has ceased to do business as a broker-dealer, investment adviser, or salesman or is subject to an adjudication of mental incompetence or to the control of a committee, conservator, or guardian or cannot be located after reasonable search, the commissioner may by order cancel the registration or application."

Section 5. Section 30-10-210, MCA, is amended to read:

"30-10-210. Examination costs. (1) Any issuer or broker-dealer who is investigated or examined in connection with a registration under parts 1 through 3 of this chapter shall reimburse the commissioner or any of his duly authorized agents, officers, or employees for actual travel expenses, a reasonable living expense allowance, and a per diem as compensation of examiners, as necessarily incurred

on account of the examination, all at reasonable rates customary therefor and as established and adopted by the commissioner upon July 1, 1961, and annually thereafter upon presentation of a detailed account of such charges and expenses by the commissioner or pursuant to his written authorization. No person shall pay and no examiner shall accept any additional emolument on account of any such examination.

(2) The commissioner shall pay to the state treasurer to the credit of the general fund all moneys received hereunder. The commissioner may give written authorization for payment of the examination costs referred to in subsection (1) by the person examined directly to the examiner.

(3) If any issuer or broker-dealer fails to pay the charges and expenses referred to above, the same shall be paid out of the funds of the commissioner in the same manner as other disbursements of such funds. The amount so paid shall be a first lien upon all of the assets and property in this state of such issuer or broker-dealer and may be recovered by suit by the attorney general on behalf of the state of Montana and restored to the appropriate fund. Failure of such issuer or broker-dealer to pay such charges and expenses shall also work a forfeiture of his or its right to do business in this state under parts 1 through 3

of this chapter."

Section 6. Section 30-10-303, MCA, is amended to read:

"30-10-303. Unlawful representation concerning registration or exemption. Neither the fact that an application for registration under 30-10-201~~(2)~~(4) or a registration statement under 30-10-203, 30-10-204, or 30-10-205 has been filed nor the fact that a person or security is effectively registered constitutes a finding by the commissioner that any document filed under parts 1 through 3 of this chapter is true, complete, and not misleading. Neither any such fact nor the fact that an exemption or exception is available for a security or a transaction means that the commissioner has passed in any way upon the merits of qualifications of, or recommended or given approval to, any person, security, or transaction. It is unlawful to make or cause to be made to any prospective purchaser, customer, or client any representation inconsistent with this section."

Section 7. Section 30-10-305, MCA, is amended to read:

"30-10-305. Injunctions and other remedies. (1) Whenever it appears to the commissioner that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of parts 1 through 3 of this chapter or any rule or order hereunder, he may in his discretion:

(a) issue an order directing the person to cease and desist from continuing the act or practice after reasonable notice and opportunity for a hearing. The commissioner may issue a temporary order pending the hearing that remains in effect until 10 days after any hearing is held or that becomes final if the person to whom notice is addressed does not request a hearing within 15 days after receipt of the notice; or

(b) without the issuance of a cease and desist order, bring an action in any court of competent jurisdiction to enjoin any such acts or practices and to enforce compliance with parts 1 through 3 of this chapter or any rule or order hereunder. Upon a proper showing a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. The commissioner may not be required to post a bond. If the commissioner prevails, he is entitled to reasonable attorneys' fees as fixed by the court.

(2) A final judgment or decree, criminal or civil, determining that a person has violated parts 1 through 3 of this chapter in an action brought by the commissioner for such violation, other than a consent judgment or decree entered before trial, is prima facie evidence against that person in an action brought against him under 30-10-307."

Section 8. Name change. Whenever the term "investment commissioner", relating to the investment commissioner, state auditor's office, created by 2-15-1901, appears in the MCA, it means "securities commissioner". The code commissioner is empowered and instructed to change all such references to "investment commissioner" to "securities commissioner".

-End-